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perpetration of fraud under the guise of law, and to suggest what appears to me to be an adequate remedy.

To illustrate: Suppose A purchases a piece of property for $50,000, gives a deed of trust on it to secure $35,000, fails to pay the taxes assessed thereon, and the property is bought in by the State. A requests B, who is his friend, perhaps confederate, to make application to the proper clerk for the purchase of said property. The notice of this application to purchase is served by the sheriff on A (see Acts 1895–96, p. 219), who is not alarmed in the least, but on the contrary "saws wood" and says nothing.

B buys the property, taking a deed from the clerk, and in the course of time the beneficiary in the trust deed wakes up to find that his "gilt-edge" security has taken wings.

It is true that most deeds of trust provide that the trustee may pay the taxes. But suppose he fails to do so, as he is very apt to do?

The remedy, it seems to me, could be found in an amendment to section 666 of of the Code, as amended by Acts 1895–96, p. 219, providing that when there is a deed of trust on delinquent property and application is made to purchase the same, notice of the application shall be served, not only on the person in whose name it stands on the records, but also on the trustee in said trust deed.

This requirement would of course give the clerks additional labor. But some remedy must be forthcoming. It is essential to our prosperity that real estate continue to be a first-class basis of credit, for the next best thing to being able to sell real estate is to be able to borrow on it.

THOMAS W. GARDNER.

Richmond, Va.

DELINQUENT LANDS.

Editor Virginia Law Register:

Now that the men who will represent us in the approaching session of the legislature have been selected, and among the number several lawyers, it is desired to call their attention, as well as the attention of the bar, to a much needed change in the last Act of Assembly in relation to delinquent lands purchased in the name of the auditor, approved January 29, 1896.

It will, of course, be conceded that in framing a new law it is well-nigh impossible to provide for every contingency, and while the theory upon which this act is founded is a good one, in practice it admits of great injustice being done in the name of the law. The idea was that lands bid in by the auditor at a delinquent tax sale, and not redeemed within two years, became the property of the Commonwealth, and in order to raise revenue, the State offers to sell, to whomsoever will pay all of the taxes, interest and costs due, any piece of property so owned by her, provided thirty days' notice is given to the former owner to redeem, the preference or refusal being given to him. No one can complain of this. But the real mischief in the law lies in the fact that it provides that notice be given to the person in whose name the real estate stood at the date of the sale of it to the Commonwealth instead of to the real parties in interest.

In order to illustrate the point, two or three instances are here cited that have come within my own observation.

Some ten years ago a bill was filed in chancery by certain complainants against

the infant heirs of their deceased brother, L, for the purpose of setting aside and annulling certain deeds to L. Complainants succeeded in their suit, the deeds to L were declared null and void, and under a decree in said cause the lands in controversy were conveyed to the complainants and the infant heirs of L jointly, by a commissioner, and this conveyance put on record, but no transfer was made upon the land books. Complainants at once filed another bill against the infant heirs of L, asking that said land be sold for partition. The relief sought was granted, and in April, 1891, a seven acre tract of the land in a city was sold by a commissioner, in town lots, to quite a large number of purchasers, who made small cash payments and gave notes at six, twelve and eighteen months for the deferred purchase money. No deed was made to any purchaser until he paid all of the purchase money due on his lot.

Very few of the lot purchasers have, to this day, paid up in full and received deeds.

The tract of land still stands on the land books in the name of L's estate. The commissioner of the court paid the taxes on the land for 1891 out of the fund in his hands, the lot purchasers being liable for the taxes on their respective lots since 1891, but no one purchaser could have paid the tax on his lot if he had wanted to, because the seven acres were assessed as a whole and the entire tract became delinquent for the tax of 1892.

In 1897, under the act referred to, application for purchase was filed with the clerk. No personal service could be had and publication was begun in the weekly edition of a daily paper, which circulates only in the rural districts, thus practically suppressing notice instead of giving it to any one interested. The parties in interest are the lot owners and the commissioner who holds purchase money notes against them. L's estate has no interest in the land. No notice of the application was given the commissioner or the lot owners, nor was such notice required under the act as it now stands.

However, before the notice matured the commissioner, by accident, heard of the application and paid the taxes out of the fund in his hands and redeemed the land, thereby preventing great injustice being done.

Another case: A building and loan association was enjoined from enforcing a deed of trust on a certain house and lot, given to secure the payment of a loan. The case was in court for some years. Finally the association obtained a decree for its debt and for a sale of the property. Prior to the litigation the property became delinquent and was sold to the auditor and never redeemed. The title was in the name of B, the borrower. After the decree of sale was entered B's brother filed an application for purchase, a copy of which was served on B. This notice was sufficient, under the present Act, but, by some mistake, it was published in a newspaper and the association happened to see it and forthwith paid the taxes and saved its stockholders from great loss.

One more instance: A purchaser of a "boom" lot from a land company in 1891, paid one-third of the price in cash and gave his notes, at one and two years, for the deferred purchase money, receiving from the company a deed with the vendor's lien therein expressed. The "boom busted" soon afterwards, the purchaser failed to pay taxes and notes. The lot was sold to the State in 1893. Notice of application to purchase was served, in 1897, upon the owner of the lot. He paid no attention to it. The lot was not worth one-half the balance of purchase

money due from him. Thirty days elapsed. The applicant obtained a deed from the clerk of the court, and the land company, without notice or neglect, lost its only security for the payment of the notes, the maker being insolvent.

It sometimes occurs that the amount secured by a deed of trust is equal to the value of the land conveyed, and sometimes greater. In cases of this kind what would prevent the grantor in the trust deed from allowing the trust estate to become delinquent and from being sold to the Commonwealth? And then, by collusion with a third party, allow notice of an application to purchase to be served on him. He keeps it quiet and does not redeem, and the applicant obtains a deed from the Commonwealth to the property.

The beneficiary under the deed, the real party in interest, gets no notice, and is deprived of his security without the least warning or notice, and without any default on his part.

These instances will serve to point out how the law, as it now stands, may be abused and perverted, and it is to be hoped that it will be amended by the next Assembly so as to prevent injustice being done the citizens of the State.

Bristol, Va. S. V. FULKERSON.

WHAT IS IT?

Editor Virginia Law Register:

Will some member of the profession say under what head the following paper should be classed? It is an actual copy of a paper issued by a justice of the peace and placed in the hands of the constable, county and names being omitted.

W.

COMMONWEALTH OF VIRGINIA,

.....County, to-wit:

To....., *Constable of said County:*

I,....., a Justice of said county, command you in the name of the Commonwealth of Virginia to summon.....to appear at.....on the 3rd day of October, 1896, at which time I shall apply for a warrant for his arrest as the trustee of his father,....., deceased, for having obtained from me under false pretenses the sum of $37.79, as follows, to-wit: $29.50 on the 2nd day of Feb. 1882, and $8.29 on the 2nd day of Dec. 1882, promising to pay when in funds of his trusteeship, he then being without such funds, thereby causing me to part with money to the amount of $37.79, the said....., trustee, then having in his possession $1000.00 of the personal estate of....., deceased, without authority from the deceased, and has refused and still refuses to pay to the said .....the aforesaid sum of $37.79, with interest thereon from the date of his order as such trustee.

You are further required to summon.....and.....to appear and give evidence in behalf of the Commonwealth upon hearing the application for such warrant.

Given under my hand this the 31st of August, 1886.

(Signed) ....., J. P.

Summon Justices.....and.....to appear and sit with....., J. P. on that day, Oct. 3rd, 1886.

(Signed) ....., J. P.